

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

FRANKLIN SMITH,)	
)	
Plaintiff,)	
vs.)	NO. CIV-16-0394-HE
)	
MANTLE, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Plaintiff, a state prisoner appearing *pro se* and *in forma pauperis*, filed this § 1983 action alleging various violations of his constitutional rights. Pursuant to 28 U.S.C. §636(b)(1)(B)-(C), the matter was referred to Magistrate Judge Shon T. Erwin for initial proceedings. The magistrate judge conducted an initial review of the complaint pursuant to 28 U.S.C. §§ 1915A(a) and 1915(e)(2)(B) and has issued a comprehensive Report and Recommendation. He has recommended that the court dismiss with prejudice all claims against defendants Prater and Durbin; (2) dismiss with prejudice any claim against defendants Hall and Elliot for monetary damages; (3) dismiss without prejudice any claims against defendant Whetsel for monetary damages and any claims against defendant Mantle; (4) dismiss as moot any claim for injunctive relief against defendants Whetsel, Hall, and Elliot; (5) deny plaintiff's request for appointed counsel; and (6) deny plaintiff's motion to add defendants. As for defendants Bowein and Baisden, the magistrate judge determined the court should conclude plaintiff has stated valid claims against them.

Plaintiff has filed an objection in which he discusses a considerable amount of

inapplicable law and claims he has not asserted. He does, though, challenge the magistrate judge's determinations that Judge Elliot is entitled to absolute immunity and that he has failed to state a claim under the Americans with Disabilities Act ("ADA")

The court agrees with the magistrate judge's analysis of plaintiff's claims. Particularly, it agrees that Judges Hall and Elliott are entitled to absolute immunity to the extent described by the magistrate judge, and that plaintiff's ADA claim fails because he did not provide any details regarding his alleged disability. *See* Report and Recommendation, Doc. #12, p. 14. However, the court notes that the magistrate judge recommended that plaintiff's ADA claim against defendant be dismissed without prejudice because it is possible that the pleading defect can be remedied.

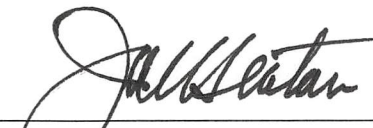
Accordingly, the court adopts Magistrate Judge Erwin's Report and Recommendation. Plaintiff's claims against defendants Prater and Durbin and any claim against defendants Hall and Elliot for monetary damages are dismissed with prejudice. Plaintiff's claims against defendant Whetsel for monetary damages and his claims against defendant Mantle are dismissed without prejudice. Plaintiff's claims for injunctive relief against defendants Whetsel, Hall, and Elliot are dismissed as moot. Plaintiff's motion for the appointment of counsel is denied, but without prejudice to being reurged subsequently, if appropriate. Plaintiff has stated valid claims for relief against defendants Bowein and Baisden for excessive force in violation of the Fourth Amendment.

Plaintiff is granted twenty (20) days within which to amend his claims against

defendants Whetsel and Mantle to correct the pleading deficiencies identified in the magistrate judge's Report and Recommendation, if he can do so. He is not granted leave to add new claims or parties.

IT IS SO ORDERED.

Dated this 22nd day of July, 2016.



JOE HEATON
CHIEF U. S. DISTRICT JUDGE